

Date: July 28, 1999

Case No: 1999-TSC-2

In the Matter of

BERNARD G. HOLLAND,

Complainant,

v.

AHTNA AGA SECURITY INCORPORATED and  
ALYESKA PIPELINE SERVICE COMPANY,

Respondents.

#### RECOMMENDED DECISION AND ORDER

This proceeding arises under the Toxic Substances Control Act (15 U.S.C. § 2622); Water Pollution Control Act (33 U.S.C. § 1367); Clean Air Act (42 U.S.C. § 7622); and the Solid Waste Disposal Act (42 U.S.C. § 5851). The regulations pertaining to this proceeding are found at 29 C.F.R. Parts 18 and 24. A notice was issued on April 22, 1999 scheduling the matter for hearing on August 9, 1999 at Anchorage, Alaska.

By letter dated July 8, 1999, counsel for the complainant, A. Alene Anderson, submitted a joint motion for approval of settlement and dismissal. This document is signed by Ms. Anderson, counsel for Ahtna AGA Security, Inc., Jerome H. Juday and by Charles P. Flynn, counsel for Alyeska Pipeline Service Company. Attached to the motion is a Settlement Agreement and Release of All Claims signed by the complainant and Arthur English, President of Ahtna AGA Security, Inc. Copies of the Settlement Agreement are attached to the copies of this Order to be served on counsel for the complainant, respondents and Secretary of Labor.

This Recommended Decision and Order will constitute the final order of the Secretary of Labor unless appealed to the Administrative Review Board. 29 C.F.R. § 24.7. Therefore, it is my responsibility to determine whether the terms of the settlement agreement are a fair, adequate and reasonable settlement of

the complaint. See 29 C.F.R. § 24.6; Macktal v. Secretary of Labor, 923 F.2d 1150, 1153-54 (5<sup>th</sup> Cir. 1991); Thompson v. U.S. Dep't. of Labor, 885 F.2d 551, 556 (9<sup>th</sup> Cir. 1989); Fuchko and Yunker v. Georgia Power Co., Case Nos. 89-ERA-9, 89-ERA-10, Sec. Order, March 23, 1989, slip op. at 1-2.

My review of the settlement and release agreement leads me to conclude that it is intended to encompass the settlement of matters under laws other than those specified in paragraph 1 above. See Settlement Agreement and Release ¶¶ 3 and 4. As explained by the Administrative Review Board in Poulos v. Ambassador Fuel Co. Inc., Case No. 86-CAA-1, Sec. Order, Nov. 2, 1987, slip op. at 2:

[The Secretary's] authority over settlement agreements is limited to such statutes as are within [the Secretary's] jurisdiction and is defined by the applicable statute. See Aurich v. Consolidated Edison Co. of New York, Inc., Case No. [86-] CAA-2, Secretary's Order Approving Settlement, issued July 29, 1987; Chase v. Buncombe County, N.C., Case No. 85-SWD-4, Secretary's Order on Remand, issued November 3, 1986.

I have therefore limited my review of the agreement to determine whether the terms are a fair, adequate and reasonable settlement of complainant's allegations that the respondents violated the Toxic Substances Control Act and other Federal employee protection statutes under my jurisdiction.

Paragraph 7 of the Settlement Agreement and Release essentially provides that the terms of the agreement shall be kept confidential. Moreover, the parties acknowledge in paragraph 7 of the agreement that this proceeding is subject to the Freedom of Information Act and that the agreement does not limit the U.S. Department of Labor with respect to claims under that statute.

The Administrative Review Board has held in a number of proceedings with respect to the confidentiality provisions and settlement agreements that the Freedom of Information Act, 5 U.S.C. § 552 (1988) (FOIA) "requires agencies to disclose requested documents unless they are exempt from disclosure . . . ." Coffman v. Alyeska Pipeline Services Co. and Arctic Slope Inspection Services, ARB Case No. 96-141, Final Order Approving Settlement Agreement and Dismissing Complaint, June 24, 1996, slip op. at 2-3; see also Plumlee v. Alyeska Pipeline Services Co., Case Nos. 92-TSC-7, 10; 92-WPC-6, 7, 8, 10, Secretary Final Order Approving Settlements and Dismissing Cases with Prejudice, Aug. 6, 1993, slip op. at 6; Davis v. Valley View Ferry Authority, Case No. 93-WPC-1, Secretary Final Order Approving Settlement and Dismissing Complaint, Jun. 28, 1993, slip op. at 2 n.1 (parties' submissions become part of record and are subject to the FOIA); Ratliff v. Airco Gases, Case No. 93-STA-5,

Secretary Final Order Approving Settlement and Dismissing Complaint with Prejudice, Jun. 25, 1993, slip op. at 2. As explained by the Administrative Review Board in *Paine v. Saybolt, Inc.*, ARB Case No. 97-136, Final Order Approving Settlement and Dismissing Complaint, Sept. 5, 1997, slip op. at 2:

The records in this case are agency records which must be made available for public inspection and copying under the FOIA. In the event a request for inspection and copying of the record in this case is made by a member of the public, that request must be responded to as provided in the FOIA. If an exemption is applicable to the record in this case or any specific document in it, the Department of Labor would determine at the time a request is made whether to exercise its discretion to claim the exemption and withhold the document. If no exemption were applicable, the document would have to be disclosed. Since no FOIA request has been made, it would be premature to determine whether any of the exemptions in the FOIA would be applicable and whether the Department of Labor would exercise its authority to claim such exemption and withhold the requested information. It would also be inappropriate to decide such questions in this proceeding.

Department of Labor regulations provide specific procedures for responding to FOIA requests, for appeals by requesters from denials of such requests, and for protecting the interests of submitters of confidential commercial information. See 29 C.F.R. Part 70 (1995). [endnote omitted.]

I therefore recommend approval of the Settlement Agreement and Release with the understanding the Department of Labor will address any Freedom of Information Request in accordance with 29 C.F.R. Part 70 (1995).

The Administrative Review Board requires that all parties seeking approval of a settlement agreement arising under the Toxic Substances Control Act provide the settlement documentation for any other alleged claim arising from the same factual circumstances forming the basis of the federal claim or to certify that no other settlement agreements were entered into by the parties. *Biddy v. Alyeska Pipeline Service Co.*, ARB Case Nos. 96-109, 97-1015, Final Order Approving Settlement and Dismissing Complaint, Dec. 3, 1996, slip op. at 3. Therefore, the parties have acknowledged that the Settlement Agreement and Release supplements the settlement reached regarding Mr. Holland's 1997 lawsuit, Case Number 3AN-97-670 Civil, the terms of which are set forth on page one, paragraph D of the Settlement Agreement and Release.

I find that the Settlement Agreement and Release is a fair, adequate and reasonable settlement of the complaint involved in this proceeding. Therefore, IT IS HEREBY RECOMMENDED that the Joint Motion to Approve Settlement Agreement and for Order of Dismissal, together with the Settlement Agreement and Release, be granted.

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DONALD W. MOSSER  
Administrative Law Judge